

Center for **Children's** Advocacy

University of Connecticut School of Law
65 Elizabeth Street, Hartford, CT 06105

TESTIMONY OF THE CENTER FOR CHILDREN'S ADVOCACY FOR THE COMMITTEE ON JUDICIARY REGARDING RAISED BILL NO. 1057

March 4, 2009

This testimony is being offered in support of Raised Bill 1057, An Act Concerning Appointment of Counsel and Guardian *ad Litem* in Certain Juvenile Matters. It is submitted on behalf of the Center for Children's Advocacy, a non-profit organization based at the University of Connecticut School of Law. The Center provides holistic legal services for poor children in Connecticut's communities through individual representation and systemic advocacy. Through our Child Abuse Project, the Center represents individual children in child abuse and neglect proceedings.

We submit this testimony in support of the proposed changes to Conn. Gen. Stat. § 46b-129a, because they signify *Connecticut's commitment to improved, zealous advocacy on behalf of children*. The proposed bill mandates that attorneys for children and youth provide traditional, client-centered representation in accordance with attorney's obligations under the Rules of Professional Conduct, state and national standards of practice,¹ and consistent with Connecticut's statutory mandate that all children and youth shall be represented by counsel throughout a juvenile proceeding.² Further, the statutory amendments *ensure that children's voices and wishes are heard* in the proceedings that impact the most intimate and significant aspects of their lives.

The Current Statutory Scheme:

The current statutory scheme, outlined in Conn. Gen. Stat. § 46b-129a, creates a dual role for attorneys assigned to represent children in protection proceedings.

- The primary role of the attorney is to provide traditional, client-centered representation, as governed by the Connecticut Rules of Professional Conduct. This role hinges on advocating for the client's wishes.
- The attorney's secondary role is to serve as the child or youth's guardian *ad litem*, which requires the attorney to determine and advocate for the child's best interests.

If an attorney believes that her two roles conflict in a particular case, the attorney may ask the court to appoint a separate guardian *ad litem* for the client.

The Urgent Need for Amendments to the Current Statute:

The current statutory scheme should be amended immediately because it is *significantly problematic and harmful to children*:

¹ See ABA/NACC Revised Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, *available at* <http://www.naccchildlaw.org/?page=PracticeStandards>.

² Conn. Gen. Stat. § 46b-129a(2) (2009).



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- The dual role requirements—and subsequent potential for conflict—can severely compromise a child or youth’s ability to have his legal rights represented in court; his voice is too often silenced as the lawyer is forced to balance the conflicting mandates of her position. Even teenagers are generally physically absent from the court proceedings that dictate where they will live, when they can see their parents or siblings, and where they will go to school. If the attorney’s ability to represent the youth’s expressed interests is compromised, then that youth is left with virtually no voice and no say in the courtroom—a result that is at odds with the current legislative mandate that children and youth be represented by counsel in all phases of a juvenile court proceeding.
- As counsel, the attorney owes a strict duty of loyalty and confidentiality to her client, as dictated by the Rules of Professional Conduct. As guardian *ad litem*, however, the attorney has no such obligations. This conflict greatly impairs the client’s chances of obtaining the uncompromised representation to which he is entitled.

Bill 1057 Provides a Remedy to These Problems:

The bill eliminates the dual role appointment for attorneys of children 7 years of age and older, by mandating those attorneys to provide traditional, client-centered representation. Attorneys will advocate for the client’s wishes, and their representation will no longer be compromised by the concurrent guardian *ad litem* role. Attorneys for children under the age of 7 will maintain the dual role, based on the general assumption that children under the age of 7 may not be as consistently able to articulate their wishes in a reasoned and informed manner.

These changes are critical because they *finally ensure that children’s voices and wishes will be heard* in the proceedings that dramatically affect their lives and families. The Connecticut Supreme Court has confirmed children’s right to have conflict-free representation in protection proceedings.³ Additionally, the Rules of Professional Conduct and the accompanying Official Commentary provide that minority is not synonymous with “disability” and that lawyers have an obligation to represent a young client’s stated interests, even if that client is as young as five or six.⁴ Finally, the Standards of Practice promulgated by both the state’s Child Protection Commission, as well as by the American Bar Association, provide that attorneys should elicit child clients’ preferences and represent their wishes and directives throughout the course of the representation.⁵

³ *In re Christina M.*, 280 Conn. 474 (2006).

⁴ The Official Commentary to Connecticut Rule of Professional Conduct 1.14 states that “children as young as five or six years of age, and certainly those of ten or twelve, are regarded as having opinions that are entitled to weight in legal proceedings concerning their custody.”

⁵ See ABA/NACC Revised Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases, *available at* <http://www.naccchildlaw.org/?page=PracticeStandards>; Connecticut Standards of Practice for Attorneys & Guardians ad Litem Representing Children in Child Protection Proceedings, *available at* <http://www.ct.gov/ccpa/cwp/view.asp?a=2587&q=315078>.

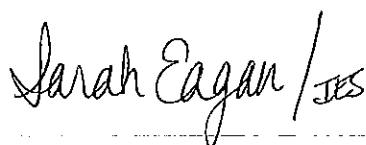
Children's Safety and "Best Interests" Will Still Be Protected:

Ensuring that children and youth in child protection proceedings are afforded their right to conflict-free legal representation will not deprive the court of information or advocacy related strictly to the child's best interests.

- The State will continue to advocate for what it believes to be in the child's best interests, and the judge has the ultimate "best interests" decision. Amending the role of the lawyer for the child does not change this dynamic; it merely ensures that the child's wishes and voice are part of the proceeding, as well.
- The child's attorney will still have the responsibility of counseling her client and mutually developing a representation strategy and goal in accordance with the Rules of Professional Conduct.⁶
- If the child's attorney believes that advocating for the child's wishes could result in *substantial harm* to the child, she can request that a guardian *ad litem* be appointed, in accordance with standards outlined in the Rules of Professional Conduct.⁷
- Finally, under the Practice Book Rules, the court can appoint a guardian *ad litem* at any time if the court believes such appointment will further the child's best interests.⁸

Abused or neglected children and youth are some of our community's most vulnerable, and often unseen and unheard, citizens. The state already mandates that these children have counsel appointed to represent them in court proceedings. This bill ensures that children and youth have the right to meaningful and conflict-free representation so that their voices can be clearly heard throughout these profound proceedings.

Respectfully submitted,

Handwritten signature of Sarah Eagan in cursive, followed by the initials JES.

Sarah Eagan, Esq.
Director of Child Abuse Project

Handwritten signature of Ingrid Swanson in cursive.

Ingrid Swanson
Law Student Intern

⁶ Conn. Rules of Prof'l Conduct 2.1.

⁷ Conn. Rules of Prof'l Conduct 1.14.

⁸ Conn. Pract. Book Rule 32a-1(c).

